



DEPARTMENT OF ADMINISTRATIVE SERVICES

STATE OF CONNECTICUT

165 Capitol Avenue
Hartford, CT 06106-1658

Senate Bill 284

An Act Concerning Percentages of Contractors and Subcontractors Who are Minorities or Women under the Set-Aside Program

Committee on Government Administration & Elections
February 22, 2013

The Department of Administrative Services ("DAS") thanks the Committee for the opportunity to submit comments on Senate Bill 284, "An Act Concerning the Percentages of Contractors and Subcontractors Who Are Minorities or Women under the Set-Aside Program."

This proposal would amend the state's set-aside statute, which currently requires each state agency to award at least 25% of all its contracts to "small business enterprises" ("SBEs") and 25% of that amount (6.25%) to "minority business enterprises" ("MBEs"). MBEs are defined in law (C.G.S. § 32-9n) to include:

"Black Americans, including all persons having origins in any of the Black African racial groups not of Hispanic origin; (2) Hispanic Americans, including all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; (3) all persons having origins in the Iberian Peninsula, including Portugal, regardless of race; (4) women; (5) Asian Pacific Americans and Pacific islanders; or (6) American Indians and persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification."

The current set-aside goals apply to all discretionary purchases made by state agencies – whether for goods, services, construction, or other agency spend.

Senate Bill 284 proposes to amend the current set-aside law for construction contracts. State agencies would be required to award construction contracts based on the following:

- For Black American-owned business enterprises, 10% of the total value of construction contracts and 10% of the total value of subcontracts on such construction contracts;

- For Hispanic American-owned business enterprises, 2.5% of the total value of construction contracts and 6% of the total value of subcontracts on such construction contracts; and
- For women-owned business enterprises, 11% of the total value of construction contracts and 15% of the total value of subcontracts on such construction contracts.

As an initial matter, we would like to point out that a number of protected classes currently included in the state's set-aside law are not included in this proposal. Further, neither existing law nor this proposal requires that each and every subcontractor working on a state construction project individually meet the stated set-aside goals – rather, the stated percentages of work to be set-aside apply to the total value of all subcontracts.

More central to this proposal, however, is the concern that any policy initiatives that seek to change the state's current set-aside laws and percentages should wait until a comprehensive updated disparity study is completed for the State of Connecticut.

The current set-aside statutes are based on a disparity study, albeit one that is 25 years old. A new, up-to-date disparity study that identifies differences between the proportion of minority-owned business in Connecticut and the share of state contracting the businesses receive will provide data essential to the process of developing new, legally justifiable goals and definitions. Without such a study, state laws that preference state contracts to companies based on race or gender are not constitutionally defensible.

DAS remains committed to increasing MBE participation on contracts let by our agency, and we have instituted and continue to explore administrative efforts to further demonstrate our commitment. To this end, DAS has engaged in numerous MBE outreach events in recent years to explain our programs and processes; we have promoted and encouraged MBE contractors to become prequalified so they are able to bid on state construction projects; we have conducted outreach event to encourage companies to become certified in the state's Supplier Diversity Program; and we have initiated and hosted meetings to hear from the MBE community about barriers to our processes and systems in an effort to create an even playing field for all.

We are happy to discuss this proposal and our thoughts with the Committee at any time. Thank you for the opportunity to submit comments on this bill.